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March 28, 2013

VIA E-MAIL TRANSMISSION AND REGULAR UNITED STATES MAIL

Christopher B. Harmon, Esquire
Maynard, Cooper & Gale, PC
1901 Sixth Avenue North
Birmingham, AL 35203-2618

Re: Agreement for Sale and Purchase of Real Property/City of Winter Haven/ Landings WH Partners, LLC and Trireme Development Corporation

Dear Chris:

On February 20, 2013, you sent my office a settlement proposal outlining your client's position and demanding a settlement sum, as well as other requirements to end the parties' dispute. As you know, the parties mediated in good faith, but were unable to resolve their differences. Now that the parties have concluded their efforts to resolve this dispute pre-suit and Mr. Pursell has publicly vowed to initiate legal action against the City, the City felt it appropriate to reiterate its position and respond to your February 20, 2013 correspondence, including the following:

- The City did not fraudulently induce your client into delaying its performance under the Agreement nor did the City misrepresent its willingness to negotiate changes to the Agreement

- The City negotiated in good faith a proposed Fifth Amendment to the Agreement which your client rejected.

- In September 2012, your client reaffirmed its intention to "live with the contract as it is currently written," but then failed to perform its express obligations under that Agreement.

- Your client has wrongly declared the City in breach of the contract based on an obligation to close and vacate the Chain O' Lakes Complex when any obligation the City had to close and vacate that facility would not arise, at the earliest, until April 19, 2016.

In your February 20th letter, you state the City, by its termination letter, "repudiated its lawful obligations under the Agreement" and that the City "wrongfully induced" your client "to amend the Agreement and later to forebear from performing under the Agreement, only to use that forbearance against" your client. Respectfully, the various contract amendments and correspondence between the City and your client and its agents simply do not support your client's position.

Your client contends it was "fraudulently induced" to execute Amendment 4-A by promises the City would negotiate an extension of your client's obligations to close on the .33 acre parcel and to submit the Declaration of Covenants, Conditions, and Restrictions ("Declarations"). Your contentions are contrary to the record and the documents that passed between the parties.

First, Amendment 4-A contains no mention whatsoever of any extension of your client's obligations to close on the .33 acre parcel or provide a draft of the Declarations. The parties previously extended the closing on the purchase and sale of the .33 acre parcel, as well as the Landings' obligation to provide a draft of the Declarations, to May 5, 2012 in the Fourth Amendment executed on April 5, 2012. The Fourth Amendment provided that your client's failure to close on the purchase of the .33 acre parcel "shall constitute a material default" under the Agreement. The Fourth-A Amendment extended the City's use of the baseball facilities through April 30, 2013, but did not otherwise change the Agreement. To the extent your client contends there was any agreement to extend the closing or preparation of the Declaration in exchange for the execution of the Fourth-A Amendment, such agreement should and would have been in that document.

Second, to the extent your client maintains the City agreed to negotiate a proposed revision to the Agreement, including but not limited to your client's obligations to close on the purchase of the .33 acre parcel and submit its draft of the Declarations, the documentary record clearly demonstrates the City did just that.

Specifically, the City, through David Dickey, submitted a proposed Fifth Amendment to your client's principal, Taylor Pursell, as well as Spencer Bomar, one of your client's agents. Your client rejected the City's proposed amendment. Mr. Bomar, responding on behalf of the Landings, said they would not negotiate for more than the "minor" considerations the Developer was seeking and if the City wanted to negotiate more, the Landings "*will simply live with the contract as it is currently written.*" (emphasis added).

Accordingly, your client rejected the City's efforts to negotiate amendments and reaffirmed its intent to be bound by the Agreement, including your client's obligations to close on the .33 acre tract and submit the Declarations to the City by May 5, 2012. Nevertheless, your client failed to perform the very obligations it reaffirmed. More than 2½ months passed without further substantive communications between the parties and

The Landings took no action to comply with its contractual obligations to close on the .33 acre parcel or to provide the draft Declarations.

Despite Mr. Bomar's representation that your client would "live with the contract as it is currently written," it nevertheless attempted a wholesale renegotiation of the Agreement through another agent, Chuck Welden, in December 2012. Mr. Welden proposed a major change to the Agreement and Developer's Agreement, and a total restructuring of the development plan that is inconsistent with the conceptual plan attached to the PUD that governs the property's development. Mr. Welden proposed, among other things, a $0 purchase price "for the land conveyed to Landings" and a grant of "total flexibility on the land it purchases as far as uses," notwithstanding the limitations contained in the PUD.

Finally, your client contends the City failed to perform "its obligations under the Agreement, including its obligation to move the ballfields and to develop a viable relocation plan for the City's amenities . . .." Your characterization of the City's obligation is flawed. The relocation of the ballfields and the closing of the Chain O'Lakes Complex are different matters. Although the City, in all likelihood, would move the ballfields and relocate the amenities to another site, it had no such legal obligation to your client. Per the Fourth-A Amendment, the obligation to your client is for the City to relinquish possession of the ballfields on April 30, 2013. Per the Developer's Agreement, the obligation to your client is to vacate the Chain O' Lakes Complex within the time provided by that agreement. The time to vacate, per the Developer's Agreement, is no earlier than April 19, 2016. Importantly, the City's obligation to vacate the Chain O' Lakes Complex, on or after April 19, 2016, is triggered only by the Landings' satisfaction of its requirements under the Developer's Agreement both (a) to close on the purchase of all of the Property and pay the full Purchase Price to the City, and (b) to design, permit and construct a minimum of 200,000 square feet of commercial or mixed retail space and a minimum of 200 hotel rooms on the Property and have certificates of occupancy or certificates of completion for same.

Contrary to your assertions, the City never communicated in any way it was unwilling or unable to convey good title to the Property or to vacate its facilities. The City did engage a design professional, but the City's decision to delay incurring design fees has nothing whatsoever to do with the City's obligation under the Developer's Agreement to convey title to and to vacate the existing Chain O'Lakes Complex site. In addition, the decision to incur design fees was expressly at the City's sole discretion.

Given the documentary record, including the Agreement, as amended, and the correspondence between the parties, the City was well within its right to terminate the Agreement for your client's breach.

The City has worked with the Landings in an attempt to bring an amicable end to the parties' dispute. The City, however, is not at liberty to excuse your client's breaches

and allow your client the freedom to develop the property in a manner inconsistent not only with the parties' Agreement and the PUD, but also in a manner that is contrary to the public interest. The City, therefore, had no choice but to notify Landings of its defaults and terminate the contract once it became clear that the Landings would not honor its contractual obligations.

Sincerely yours,

Frederick J. Murphy, Jr.
(Signed in Mr. Murphy's absence to avoid a delay)

cc: Jack Brandon, Esquire (via e-mail transmission and regular US Mail)
Mayor and Commissioners
Deric C. Feacher, City Manager
David Dickey, Community and Economic Development Director
T. Michael Stavres, Community Services Director
Michele Stayner, Executive Services Director
Calvin Bowen, Financial Services Director
Tony G. Jackson, Fire Chief
Gary Hester, Police Chief
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